

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CAROL L. THOMAS

(Case No. 11939)

A hearing was held after due notice on April 3, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front, rear, and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is requesting a variance of 0.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 7.8 feet from the twenty (20) feet rear yard setback requirement for an existing porch, a variance of 2.2 feet from the five (5) feet rear yard setback requirement for an existing shed, and a variance of 2.4 feet from the five (5) feet side yard setback requirement on the west side for an existing shed. This application pertains to certain real property located on the north side of 4th Street approximately 349 feet east of Bald Eagle Way (Route 273A) (911 Address: 37417 Fourth Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.16-53.02.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, pictures of the Property, and a survey of the Property dated October 27, 2016.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support to the Application and one (1) letter of opposition to the Application.
3. The Board found that Carol Thomas was sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Schab stated that the Applicant is selling the Property and obtained a survey which showed several encroachments. The Applicant did not learn of the encroachments until the survey was completed.
5. The Board found that Mr. Schab stated that the Property measures 50 feet by 100 feet.
6. The Board found that Mr. Schab stated that the manufactured home was placed on the lot in 1990 but was too close to the front yard property line. The home encroaches only 4 inches into the front yard setback area.
7. The Board found that Mr. Schab stated that the Applicant purchased the Property in 2000.
8. The Board found that Mr. Schab stated that the porch was added by the Applicant but the Applicant retained a contractor to build the porch.
9. The Board found that Mr. Schab stated that the existing shed was moved to the Property in its present location. The shed cannot be placed elsewhere on the lot while still providing access thereto. The shed is used for storage.
10. The Board found that Mr. Schab stated that the structures do not adversely affect the neighboring properties and that the variances do not alter the essential character of the neighborhood.
11. The Board found that Mr. Schab stated that the variances are need in order to sell the Property.
12. The Board found that Mr. Schab stated that the variances requested are the minimum variances necessary to afford relief.

13. The Board found that Mr. Schab stated that the neighbor most affected by the encroachments supports the Application.
14. The Board found that Mrs. Thomas, under oath, affirmed the statements made by Mr. Schab.
15. The Board found that Mrs. Thomas testified that she purchased the Property in 2000 and the dwelling has been on the Property since 1990.
16. The Board found that Mrs. Thomas testified that the porch was constructed by a contractor hired by her husband. The existing shed was placed around 2002-2003 by a dealer hired by her husband.
17. The Board found that Mrs. Thomas testified that her husband has since passed away.
18. The Board found that Mrs. Thomas testified that she has moved the shed as far into compliance as it can be placed.
19. The Board found that Mrs. Thomas testified that no neighbors that she has spoken with have any issues with the Application.
20. The Board found that Michael Pizzola was sworn in to testify about the Application.
21. The Board found that Mr. Pizzola testified that he is a retired contractor and he helped Mrs. Thomas move the existing shed. The shed originally encroached onto neighboring property and has been moved as close to the house as safely possible.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is clearly unique as it is a small and narrow lot. The Property measures 50 feet wide by 100 feet deep; as is shown on the survey. The small size of the Property has created an exceptional practical difficulty for the Applicant. These unique physical conditions have created an unusual and limited building envelope for the Applicant. The Board also notes that the home was placed on the Property by a prior owner and the Applicant relied on contractors to construct the porch and to place the shed on the Property in compliance with the Sussex County Zoning Code.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was created many years ago and the home on the Property has been there for since 1990. The home was placed on the Property by a prior owner and encroaches only 4 inches into the setback area. The Applicant seeks to retain the dwelling, porch, and shed on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the dwelling, porch, and shed to be retained on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the shed provides necessary storage and the Applicant has attempted to move the shed into compliance. Pictures provided by the Applicant demonstrate that the shed has been moved as far into compliance as possible.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed many years ago and is an undersized lot. The Board notes that the small size of the lot greatly limits the building envelope. The Applicant did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. These unique physical conditions have resulted in a limited

building envelope and have created the exceptional practical difficulty for the Applicant. Likewise, the Applicant did not place the home on the Property and the Applicant relied, to her detriment, on contractors to build the porch and place the shed on the Property. The Applicant only learned of the encroachments when a recent survey was completed even though the structures have been on the Property for quite some time.

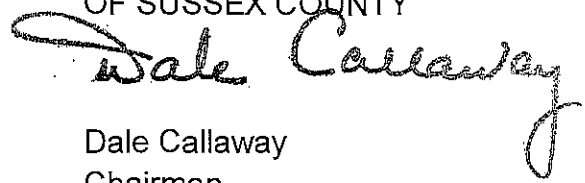
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The dwelling has been on the Property since 1990 and only encroaches into the setback area by 4 inches. This encroachment is likely not even noticeable; particularly since the front of the Property does not appear to match the edge of paving for Fourth Street (as shown on the survey). The shed and porch have been on the Property for years as well without complaints noted to the Applicant. While a letter of opposition was presented, the opposition did not convince the Board that the structures have somehow altered the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received a letter supporting the Application from the neighbor most affected by the variances.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized home with related structures on the lot. No additions to those structures are proposed. The Board also notes that the Applicant has moved the shed farther into compliance prior to filing this Application.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date May 16, 2017